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C O N F I D E N T I A L SECTION 01 OF 02 ANKARA 004256

SIPDIS

DEPARTMENT FOR EUR/SE

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TAGS: [PGOV](#) [PREL](#) [PHUM](#) [TU](#)

SUBJECT: MOJ OFFICIAL BLAMES "NARROW MINDED" JUDGES FOR
SUSPENSION OF TORTURE CONVICTION

REF: 02 ANKARA 8881

(U) Classified by Polcouns John Kunstadter. Reasons 1.5(b)
and (d).

11. (C) Summary: In pursuing why the Turkish Appeals Court has ruled to suspend the sentences of two police convicted of torturing a detainee in 1997, we have learned that a recent amendment to the criminal code outlawing the suspension of torture convictions does not apply to pre-existing cases. However, a Justice Ministry contact blamed the ruling on "narrow minded" judges skeptical of the GOT's EU-related legal reforms. A human rights attorney called the ruling "outrageous" and argued the Board should have considered the recent amendment in its decision. Given that many jurists do not support recent legal reforms, similar retrograde rulings are likely to continue periodically until all pre-reform cases have been concluded. End Summary.

Suspension Ends Long Legal Battle

12. (U) The Court of Appeals General Penal Board ruled June 24 to suspend the sentences of two policemen convicted of torturing a detainee in 1997. In a 15-8 decision, the Board determined that the policemen should be given "one more chance" in light of their good behavior during the trial and the absence of any prior criminal records. The Board's ruling, which is final, brings an end to a long, seesaw legal battle over the sentencing of the officers. In the initial trial, a Bursa court convicted the policemen, Ramazan Aktas and Turhan Sumer, and sentenced them to 10 months imprisonment for torturing suspect Orhan Buyak in 1997 in an effort to make him confess to a crime. However, the court suspended the punishment, taking into consideration "the past behavior of the policemen and the view that they will not commit a crime again." An appeals court later overruled the suspension and sent the case back to the lower court with instructions to implement the sentences. However, the lower court stuck by its original decision, thereby sending the case to the General Penal Board for a final ruling.

January Amendment Does Not Apply

13. (U) The suspension comes despite a January amendment to the penal code revoking the authority of judges to suspend sentences in torture cases (reftel). Parliament did not have the option of applying the amendment to pre-existing cases -- under Turkish law, legal amendments that are beneficial to defendants can be applied retroactively, but those that are prejudicial to defendants cannot. Since the crime in this case was committed well before the amendment, the decision to suspend the sentences is legal.

MOJ: Judges Reject Spirit of Reforms

14. (C) In a July 3 discussion with us, Justice Ministry Director General for International Relations Abdulkadir Kaya noted that the Board's decision, while it may be technically legal, contradicts the spirit of recent EU-related amendments and raises doubts about the depth of GOT commitment to judicial reform. Kaya acknowledged that judges and prosecutors are generally skeptical of the reforms and resentful of GOT efforts to change their practices. The Justice Ministry, in its training seminars on the reforms, encourages judges and prosecutors to take into account the latest legal amendments, even if those amendments do not apply to the case in hand, he said. However, Kaya said,

Ministry speakers usually get a frosty response from jurists, who tend to sympathize with police and view advice from Ankara as meddling. "They say, 'We understand the reality in small towns. We understand the position police are in. You are just sitting in an office in Ankara making laws,'" Kaya said. Many judges and prosecutors have a "narrow minded" perspective, and it will take time to change their views, he averred.

Board of Judges Cannot Change Attitudes

15. (C) Kaya rejected the suggestion that the Supreme Board of Judges and Prosecutors should discipline jurists whose actions contradict the spirit of judicial reform. The role of the Board, he asserted, is to enforce the letter of the law. If the Board took action against a jurist for a decision that was technically legal, it would be inappropriately acting as an appeals court, he argued.

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Attorney: Police Given Second Chance to Torture
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16. (C) Yusuf Alatas, attorney and Human Rights Association vice chairman, ridiculed the Penal Board's "outrageous" decision to suspend the sentences. "They want to give them a second chance? A second chance for what, to commit torture?" he asked. Alatas argued that the Board should have considered the January amendment in making its decision. Unfortunately, he averred, the judiciary over the past 20 years has been staffed largely with "nationalists" who oppose human rights reform, particularly among jurists appointed by the Nationalist Movement Party (MHP) during its years in government.

Comment

17. (C) Viewed from a distance, the suspension of the torture sentence might appear as an anomaly in the context of an overall trend toward GOT human rights reform. But there has never been consistent, uninterrupted progress on torture or any other human rights problem in Turkey. The reform current has a powerful undertow. As Justice Minister Cicek, Deputy Chief Justice of the Supreme Court Kilic, and former Justice Minister Celikel have bluntly told us, judges and prosecutors are among those least supportive of the new legal amendments and of reform in general. Given that reforms designed to increase punishments for certain crimes are not retroactive, we can expect to continue to see rulings like this latest one periodically for the next two to three years, until all the pre-reform court cases have been cleared.
PEARSON